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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,460	02/17/2004	Timothy M. Holub	306257	1388

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LEYDIG, VOIT & MAYER, LTD.  
(SEATTLE OFFICE)  
TWO PRUDENTIAL PLAZA  
SUITE 4900  
CHICAGO, IL 60601-6780

EXAMINER
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GRAYSAY, TAMARA L

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/780,460

Applicant(s)

HOLUB, TIMOTHY M.

Examiner

Tamara L. Graysay

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The amendment filed 26 June 2006 has been entered. The objections to the drawings and specification have been overcome by the amendment to the specification and submission of replacement drawing sheets. However, due to scope of new claim 26 the drawings are objected to as noted below.

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the structure comprising “exactly one pole sleeve for each pole segment,” as recited in claim 26, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

In particular, the pole segment is defined in claim 21 as that portion extending from the top to one end of the pole, i.e., two pole segments per pole, and there is no embodiment depicting one pole sleeve per pole segment, rather FIG. 1 depicts at least four pole sleeves per pole segment, FIG. 3 depicts four, FIG. 4 depicts five, and FIG. 5 depicts eight.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112, first paragraph***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 26 and 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has not indicated where support in the original disclosure can be found for new claims 26 and 33. The pole segments are defined as the portion from the top of the tent to the end of the pole. The specification as originally filed fails to disclose a *structure comprising three (claim 26) or four (claim 33) supports comprising exactly one pole sleeve for each pole segment*. Therefore, applicant has not shown possession of the invention recited in claims 26 and 33.

***Claim Rejections - 35 USC § 112, second paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 25-27 and 32-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25: The recitation of “at least one pole sleeve” must be related to or clearly distinguished from the first, second, and third supports recited in claim 21.

Claim 26: The recitation of “exactly one pole sleeve for each pole segment” is confusing because the structure, as defined in claim 21, comprises three distinct supports for each pole segment. The pole sleeve must be related to or clearly distinguished from the first, second, and third supports recited in claim 21.

Claim 27: The recitation of “plurality of pole sleeves” is confusing because the structure, as defined in claim 21, comprises three distinct support for each pole segment. The plurality of pole sleeves must be related to or clearly distinguished from the first, second, and third supports recited in claim 21.

Claim 32: The recitation of “at least one pole sleeve” must be related to or clearly distinguished from the first, second, third, and fourth supports recited in claim 28.

Claim 33: The recitation of “exactly one pole sleeve for each pole segment” is confusing because the structure, as defined in claim 28, comprises four distinct supports for each pole segment. The pole sleeve must be related to or clearly distinguished from the first, second, third, and fourth supports recited in claim 28.

Claim 34: The recitation of “plurality of pole sleeves” is confusing because the structure, as defined in claim 28, comprises four distinct support for each pole segment. The plurality of pole sleeves must be related to or clearly distinguished from the first, second, third, and fourth supports recited in claim 28.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 21, 25, 26, 28, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Weber (US-5273142).

*In light of dependent claims 26 (and 33), for this rejection, the parent claims have been interpreted as the three (and four) supports being integral with each other, i.e., exactly one pole support for each pole segment.*

Claim 21, 25 and 26: Weber discloses a tent comprising: a top (e.g., top 24; FIG. 5); floor edges (e.g., floor edges 28, 30, 32, 34; FIG. 5); sidewalls extending from the floor edges to the top (e.g., front and sidewalls 12, 16; FIG. 5); at least one pole having first and second ends (e.g., poles 48, 50; FIG. 5) and that is bent to extend along the sidewalls and over the top (e.g., FIG. 2) and that is attached at the two ends at first and second locations at or near the floor edges (FIG. 5 depicts the ends of the poles at or near the floor edges), the pole defining a first pole segment (e.g., 46) extending between the top and the first location and a second pole segment (e.g., 48) extending between the top and the second location; for at least one of the pole segments (e.g., segment 48 in FIG. 5) a structure for supporting the sidewalls (e.g., 12 in FIG. 5) at least partly by the pole, the structure comprising:

a first support for suspending the sidewall (12) at a first position adjacent the top (e.g., near reference character 20 in FIG. 5), the first support being configured to support the first position a first distance from the pole (the first distance is the distance between the upper portion of pole segment 48 and the sidewall 12);

a second support for suspending the sidewall at a second position adjacent the second location (e.g., near reference character 44 in FIG. 5) and spaced from the first location (i.e., the first location is at the opposite end of the pole segment from the second location as depicted in FIG. 5), the second support being configured to support the second position a second distance from the pole (e.g., the second distance is the distance between the lower portion of pole segment 48 and the sidewall 12); and

a third support for suspending the sidewalls at a third position between the first and second positions (e.g., approximately at the middle portion of the sleeve above reference character 36 in FIG. 5), the third support being configured to support the third position at third distance from the pole (e.g., the third distance is the distance between the middle portion of the pole segment 48 and the sidewall 12);

the third distance being greater than the first distance (the third distance at the middle portion of the pole segment 48 is greater than the first distance at the upper portion of the pole segment 48 as depicted in FIG. 5), and the third distance being greater than the second distance (the third distance at the middle portion of the pole segment 48 is greater than the second distance at the lower portion of the pole segment 48 as depicted in FIG. 5).

Claim 28, 32 and 33: Weber discloses a tent comprising: a top (e.g., top 24; FIG. 5); floor edges (e.g., floor edges 28, 30, 32, 34; FIG. 5); sidewalls extending from the floor edges to the top (e.g., front and sidewalls 12, 16; FIG. 5); at least one pole having first and second ends (e.g., poles 48, 50; FIG. 5) and that is bent to extend along the sidewalls and over the top (e.g., FIG. 2) and that is attached at the two ends at first and second locations at or near the floor edges (FIG. 5 depicts the ends of the poles at or near the floor edges), the pole defining a first pole segment (e.g., 46) extending between the top and the first location and a second pole segment (e.g., 48) extending between the top and the second location; for at least one of the pole segments (e.g., segment 48 in FIG. 5) a structure for supporting the sidewalls (e.g., 12 in FIG. 5) at least partly by the pole, the structure comprising:

a first support for suspending the sidewall (12) at a first position adjacent the top (e.g., near reference character 20 in FIG. 5), the first support being configured to support the first position a first distance from the pole (the first distance is the distance between the upper portion of pole segment 48 and the sidewall 12);

a second support for suspending the sidewall at a second position adjacent the second location (e.g., near reference character 44 in FIG. 5) and spaced from the first location (i.e., the first location is at the opposite end of the pole segment from the second location as depicted in FIG. 5), the second support being configured to support the second position a second distance from the pole (e.g., the second distance is the distance between the lower portion of pole segment 48 and the sidewall 12); and



a third support for suspending the sidewalls at a third position between the first and second positions (e.g., approximately at the middle portion of the sleeve above reference character 36 in FIG. 5), the third support being configured to support the third position at third distance from the pole (e.g., the third distance is the distance between the middle portion of the pole segment 48 and the sidewall 12);

the third distance being greater than the first distance (the third distance at the middle portion of the pole segment 48 is greater than the first distance at the upper portion of the pole segment 48 as depicted in FIG. 5), and the third distance being greater than the second distance (the third distance at the middle portion of the pole segment 48 is greater than the second distance at the lower portion of the pole segment 48 as depicted in FIG. 5); and

a fourth support for suspending sidewalls at a fourth position between the third and first positions (e.g., at the portion between the middle portion of the sleeve and the top end of the sleeve);

the fourth distance being greater than the first distance, and the fourth distance being less than the third distance (inherent because the sleeve of Weber is tapered toward each end of the sleeve as depicted in FIG. 5).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21-23, 25, 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (US-5273142) in view of Nichols (US-4352362).

Claim 21: Weber discloses a tent comprising: a top (e.g., top 24; FIG. 5); floor edges (e.g., floor edges 28, 30, 32, 34; FIG. 5); sidewalls extending from the floor edges to the top (e.g., front and sidewalls 12, 16; FIG. 5); at least one pole having first and second ends (e.g., poles 48, 50; FIG. 5) and that is bent to extend along the sidewalls and over the top (e.g., FIG. 2) and that is attached at the two ends at first and second locations at or near the floor edges (FIG. 5 depicts the ends of the poles at or near the floor edges), the pole defining a first pole segment (e.g., 46) extending between the top and the first location and a second pole segment (e.g., 48) extending between the top and the second location; for at least one of the pole segments (e.g., segment 48 in FIG. 5) a structure for supporting the sidewalls (e.g., 12 in FIG. 5) at least partly by the pole, the structure comprising:

a first support for suspending the sidewall (12) at a first position adjacent the top (e.g., near reference character 20 in FIG. 5), the first support being configured to support the first position a first distance from the pole (the first distance is the distance between the upper portion of pole segment 48 and the sidewall 12);

a second support for suspending the sidewall at a second position adjacent the second location (e.g., near reference character 44 in FIG. 5) and spaced from the first location (i.e., the first location is at the opposite end of the pole segment from the second location as depicted in FIG. 5), the second support being configured to support the second position a second distance from the pole (e.g., the second distance is the distance between the lower portion of pole segment 48 and the sidewall 12); and

a third support for suspending the sidewalls at a third position between the first and second positions (e.g., approximately at and above reference character 36 in FIG. 5), the third support being configured to support the third position at third distance from the pole (e.g., the third distance is the distance between the middle portion of the pole segment 48 and the sidewall 12);

the third distance being greater than the first distance (the third distance at the middle portion of the pole segment 48 is greater than the first distance at the upper portion of the pole segment 48 as depicted in FIG. 5), and the third distance being greater than the second distance (the third distance at the middle portion of the pole segment 48 is greater than the second distance at the lower portion of the pole segment 48 as depicted in FIG. 5).

The claim has been interpreted as comprising at least three distinct supports, i.e., first, second, and third, whereas Weber depicts first, second, and third supports that are integral. Thus, Weber lacks three distinct supports.

Nichols teaches structure that comprise at least three supports for each pole segment (e.g., sleeve segments 24a, 24b, 24c; FIG. 1) and alternatively the supports

comprise at least three supports for each pole segment (e.g., support straps 80a, 80b, 80c, 80d and tab 55 may comprise a strap (4:65-67); FIG. 7). Such an arrangement permits access to joints present in a collapsible bent pole.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the unitary or integral support of Weber to include three distinct supports, such as suggested by the support sleeves of Nichols, in order to permit access to joints in a collapsible bent pole. Applicant has provided no evidence that three separate supports achieves an unexpected result.

Claims 22 and 23: The Weber pole is attached at two diagonally opposite corners of the tent (e.g., opposite corners attached to the ends of 46 and 48 respectively, FIG. 2).

Claims 25 and 27: In the combination, the structure comprises a plurality of sleeves as noted with regard to Nichols (see claim 21 above).

Claim 28: Weber discloses a support that has a greater distance from the sidewall at the center of the pole segment than at the end of the pole segment. Weber lacks the support being four distinct supports.

Nichols teaches structure that comprise at least four supports for each pole segment (e.g., FIG. 7 which depicts a plurality of supports (80a-80d) for the lower portion of the pole and tab 55 may comprise a strap (4:65-67)). Such an arrangement permits access to joints present in a collapsible bent pole.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify further the unitary or integral support of Weber to include four supports, such as suggested by the distinct support sleeves of Nichols, in order to permit access to joints in a collapsible bent pole. Applicant has provided no evidence that four separate supports achieves an unexpected result.

Claims 29 and 30: The Weber pole is attached at two diagonally opposite corners of the tent (e.g., opposite corners attached to the ends of 46 and 48 respectively, FIG. 2).

7. Claims 24 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (US-5273142) and Nichols (US-4352362) as applied to claims 21 and 28 above, and further in view of Nelson (US-6194329).

Claims 24 and 31: Nelson teaches the common use of a rain fly (1:26-52) over a tent to form a double wall system in order to provide added protection from driving wind and/or rain for all the openings of the tent.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify further the Weber and Nichols combination to include a rain fly, such as taught by Nelson, in order to provide added protection from driving wind and/or rain for all the openings of the tent. It is inherent in the combination that a rain fly used over the tent would be spaced outward from the sidewalls by the third spacing at the third location.

*Response to Arguments*

8. Applicant's arguments with respect to claims 21-34 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

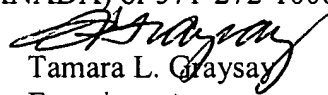
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is 571-272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tamara L. Graysay  
Examiner  
Art Unit 3636

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